

[Cite as *State v. Jones*, 2010-Ohio-1985.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93478

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CASSANDRA JONES

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-422446

BEFORE: Gallagher, A.J., Jones, J., and Cooney, J.

RELEASED: May 6, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

SEAN C. GALLAGHER, A.J.:

{¶ 1} Appellant, Cassandra Jones, appeals the decision of the Cuyahoga County Court of Common Pleas that denied her postsentence motion to withdraw guilty plea. For the reasons stated herein, we affirm the decision of the trial court.

{¶ 2} On April 22, 2002, Jones was indicted for aggravated murder with felony murder and firearm specifications (R.C. 2903.01), aggravated murder with firearm specification (R.C. 2903.01), and aggravated robbery with firearm specification (R.C. 2911.01). At the time of the commission of the crime, Jones was 17 years old. Jones filed a delayed appeal that was subsequently withdrawn.

{¶ 3} On August 8, 2002, as part of a plea bargain, Jones entered a plea of guilty to aggravated murder with a firearm specification, and the remaining counts were nolle. The trial court sentenced Jones to a prison term of three years on the firearm specification to be served prior to and consecutive with a term of life in prison with parole eligibility in 20 years.

{¶ 4} On April 1, 2009, more than six years after her conviction, Jones filed a motion to withdraw guilty plea and an ineffective assistance of counsel claim. She alleged her counsel misadvised her that if she did not take the plea of life in prison offered by the state, she would be subject to the death penalty if convicted at trial. Jones submitted her own affidavit, as well as

affidavits from three family members, indicating she was told by her attorney that she would be facing the death penalty if she went to trial.

{¶ 5} On June 9, 2009, the trial court denied the motion to withdraw guilty plea. Jones timely filed this appeal from that ruling.

{¶ 6} Jones raises four assignments of error for our review. She argues that her trial counsel rendered ineffective assistance of counsel; that the trial court should have allowed her to withdraw her guilty plea because the plea was not knowingly, voluntarily, or intelligently entered; that the trial court failed to correct a manifest injustice by not vacating the guilty plea; and that the timeliness of her motion to withdraw is not a dispositive factor.

{¶ 7} It is well recognized that the doctrine of res judicata bars claims that were raised or could have been raised on direct appeal. *State v. Davis*, 119 Ohio St.3d 422, 2008-Ohio-4608, 894 N.E.2d 1221. Consistent therewith, this court has consistently recognized that the doctrine of res judicata bars all claims raised in a Crim.R. 32.1 postsentence motion to withdraw a guilty plea that were raised or could have been raised on direct appeal. *State v. Johns*, Cuyahoga App. No. 92627, 2010-Ohio-68; *State v. McGee*, Cuyahoga App. No. 91638, 2009-Ohio-3374.

{¶ 8} Because Jones could have raised the issues concerning the voluntariness of her plea and the ineffective assistance of trial counsel in a direct appeal, she is precluded by res judicata from raising the issues herein.

{¶ 9} Even if we were to consider appellant's claims, they still fail on the merits. Crim.R. 32.1 provides that "to correct manifest injustice[,] the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea." The defendant has the burden of proof, and postsentence withdrawal of a guilty plea is only available in extraordinary cases to correct a manifest injustice. *State v. Smith* (1977), 49 Ohio St.2d 261, 264, 361 N.E.2d 1324; *State v. Sneed*, Cuyahoga App. No. 80902, 2002-Ohio-6502. A trial court's decision is reviewed for an abuse of discretion. *Smith*, supra.

{¶ 10} Jones claims that she accepted the plea deal in this case after her trial counsel misadvised her that she would be facing the death penalty if she went to trial. The only evidence in support of that claim is her own affidavit and those submitted from family members. The affidavits lack detail and are not corroborated by the record.

{¶ 11} Furthermore, there is no suggestion that Jones was not aware of the penalty she faced for the crime to which she pled guilty. The trial court determined that Jones understood the penalty she faced, that she was aware

of her rights, and that she entered a knowing, intelligent, and voluntary plea of guilty.

{¶ 12} It is also a consideration that Jones waited more than six years to file her motion. Although Crim.R. 32.1 does not prescribe a time limitation, “undue delay between the occurrence of the alleged cause for withdrawal of a guilty plea and the filing of a motion under Crim.R. 32.1 is a factor adversely affecting the credibility of the movant and militating against the granting of the motion.” *State v. Bush*, 96 Ohio St.3d 235, 2002-Ohio-3993, 773 N.E.2d 522, at ¶ 14, quoting *Smith*, 49 Ohio St.2d 261, paragraph three of the syllabus.

{¶ 13} Upon our review, we cannot say the trial court abused its discretion in denying Jones’s motion to withdraw her guilty plea.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, ADMINISTRATIVE JUDGE

LARRY A. JONES, J., and
COLLEEN CONWAY COONEY, J., CONCUR